

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Lorne Wayne Sokol, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that would disclose the identity of the patients whose names are disclosed in the Exhibits filed at the hearing or the submissions of the parties under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Sokol, L.W. (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. LORNE WAYNE SOKOL

PANEL MEMBERS:

DR. R. MACKENZIE (CHAIR)
D. DOHERTY
DR. C. CLAPPERTON
DR. E. ATTIA (Ph.D.)
DR. M. GABEL

Hearing Date:	November 16, 2011
Decision Date:	November 16, 2011
Release of Written Reasons:	December 12, 2011

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on November 16, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Lorne Wayne Sokol committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code (the ACode®), which is Schedule 2 to the *Regulated Health Professions Act*, 1991, in that he has been found guilty of an offence that is relevant to his suitability to practise;
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 (“O. Reg. 856/93”), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
3. under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, in that he engaged in conduct unbecoming for a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Sokol admitted the first allegation of professional misconduct in the Notice of Hearing, that he has been found guilty of an offence that is relevant to his suitability to practise. Counsel for the College withdrew the second and third allegations in the Notice of Hearing.

FACTS AND EVIDENCE

The following facts were set out in the Agreed Statement of Facts and Admissions that was filed as an exhibit and presented to the Committee:

PART I – FACTS

Background

1. Dr. Lorne Wayne Sokol is a family physician currently practicing in Toronto, Ontario, where his practise is focused on pain management. He attended medical school at the University of Toronto and obtained his Independent Practice Certificate from the College of Physicians and Surgeons of Ontario in 1986.

The Provincial Offence Proceedings

2. On or about November 25, 2009 Dr. Sokol was charged under the Health Insurance Act as follows:

between March 1, 2003 and February 15, 2007 Dr. Sokol did submit billings to the Ontario Health Insurance Plan that did not comply with the requirements of the Schedule of Benefits and did thereby commit an offence under the Health Insurance Act.

Attached at Appendix A [to the Agreed Statement of Facts and Admissions] is a certified copy of the Information regarding this charge.

3. On or about December 14, 2009, Dr. Sokol pleaded guilty in the Ontario Court of Justice before the Hon. Mr. Justice P. Bentley and was found guilty of submitting billings to the Ontario Health Insurance Plan (“OHIP”) that did not comply with the requirements of the Schedule of Benefits, thereby committing an offence under the Health Insurance Act, R.S.O. 1990, c. H.6, contrary to section 44(1)(a). The conviction related to the period from approximately March 1, 2003, to February 15, 2007. Attached at Appendix B [to the Agreed Statement of Facts and Admissions] is a certified copy of the transcript of

the Guilty Plea Proceedings held in Toronto at the Ontario Court of Justice on December 14, 2009.

4. In light of submissions made by the parties, and acknowledging that Dr. Sokol had made a significant repayment of the amount owing to the Workplace Safety and Insurance Board (\$2,913,596.45) and to OHIP (\$597,760.17), totalling \$3,511,356.62, Justice Bentley imposed a sentence that included a fine of \$25,000.00, plus the victim fine surcharge of \$6,250, payable in 7 days.

History with the CPSO

5. Dr. Sokol has no prior history before the Discipline Committee.
6. Dr. Sokol has been fully cooperative throughout the College's investigation of this matter.
7. The College notes that in July 1998 the Medical Review Committee of the College recommended that the General Manager of OHIP require Dr. Sokol to reimburse OHIP in respect of billings for services provided between July 1990 and November 1992. That decision was appealed by Dr. Sokol. No final disposition was ever made by the Health Services Appeal Board ("HSARB") as an agreement was reached between Dr. Sokol, the General Manager of OHIP and the Medical Review Committee of the College. The agreement included a reimbursement to OHIP by Dr. Sokol.

PART II – ADMISSIONS

8. Dr. Sokol admits the facts set out above and admits that he has been found guilty of an offence that is relevant to his suitability to practise.
9. Dr. Sokol admits that this constitutes professional misconduct under clause 51(1)(a) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admissions. Having regard to these facts, the Committee accepted Dr. Sokol's admission and found that he committed an act of professional misconduct, in that he has been found guilty of an offence that is relevant to his suitability to practise.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order.

The Committee reviewed letters from Dr. Sokol's patients. There were no comments that indicated their understanding of why he was the subject of a Discipline Hearing at the College, and they were given no weight on the Committee's determination of penalty.

The Committee also considered an Order of the Health Services Appeal and Review Board (HSARB) dated, December 7, 2000. This Order required Dr. Sokol to reimburse the Ontario Health Insurance Plan (OHIP) the amount of \$77,295.76. Counsel for the College submitted that Dr. Sokol's billing history was relevant for determining an appropriate penalty as it speaks to a prior occasion when he was alerted to problems with his billing, although the procedures at issue in that case were different from those in this case.

Dr. Sokol's counsel argued that the previous issue with the Medical Review Committee of the College and OHIP did not constitute a prior finding and is irrelevant, calling it "stale-dated." The Committee disagrees. The Committee believes it is significant that Dr. Sokol has been questioned about his billing practices and has been required to repay OHIP in the past. The Committee would have expected Dr. Sokol to have had a higher degree of vigilance to the appropriateness of his billing practices given this history. Unfortunately, there is no evidence that this was the case for Dr. Sokol. In addition, the Committee would be unduly fettered in considering measures to deal with the risk that a

physician poses for similar behaviour in the future if prior history could not be considered in the penalty phase of the hearing.

The very large amount of money involved over 4 years of billing OHIP and the Workplace Safety and Insurance Board (WSIB) for claims that did not comply with the Schedule of Benefits suggests that Dr. Sokol was cavalier about ensuring the validity of his claims. Dr. Sokol's counsel points out that it was a "due diligence" issue and it was not a matter of dishonesty. Given Dr. Sokol's prior history, claiming to be unknowing that such a large amount of money was being inappropriately billed and not taking all the necessary steps to inform himself of the requirements of the Schedule of Benefits raised questions with the Committee. The fact that neither OHIP nor the WSIB caught the errors for years was beside the point.

We are well aware that the Ontario Court of Justice accepted Dr. Sokol's plea of guilty to committing an offence under the *Health Insurance Act*, R.S.O. 1990, c.H.6, contrary to section 44(1)(a) of the Act. That this offence did not involve fraudulent intent was a governing factor in the decision of this Committee in this case. Dr. Sokol repaid the money that was inappropriately remitted to him by reasons of his excessive billing, prior to his case being heard in court. That fact serves as a strong mitigating factor in the view of the Committee.

Other mitigating factors include the fact that Dr. Sokol has acknowledged his guilt and admitted his professional misconduct. His acceptance of responsibility has significantly reduced the time and cost that would have been involved in a lengthy hearing. He has also paid a fine and victim fine surcharge of \$31,000 .00 under the sentencing order of the Ontario Court.

The Committee acknowledges that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee considered the precedents put before it by both counsel. Some of those cases involved doctors who knowingly defrauded OHIP as well as others who failed to

exercise due diligence. The penalty proposed by way of joint submission is appropriate, in our view, after consideration of previous similar cases.

In addition, the general principles to consider when looking at the penalty were examined to determine the appropriateness of the proposed order. Dr. Sokol will face a suspension that will serve as a specific deterrent to him and a general deterrent to the members of the profession as well. The public will be protected by the suspension and reprimand.

Monitoring of Dr. Sokol's billing and unannounced visits to his practice will serve to address any residual risk he poses for repeating this behaviour and will also protect the public. An ethics course will address the rehabilitation of Dr. Sokol and contribute to public protection. The integrity of the profession will be maintained by the sanctions he is facing.

Justice is served by the Committee's acceptance of the joint submission. Dr. Sokol has repaid the money he owes and has cooperated with the process. Guiding principles for penalty have been met.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar suspend Dr. Sokol's certificate of registration for a period of three (3) months, to commence at 12:01 a.m. on December 1, 2011.
2. The Registrar impose the following specified terms, conditions and limitations on Dr. Sokol's certificate of registration:
 - a) Dr. Sokol shall, at his own expense, participate in and successfully complete an educational program in ethics approved by the College;
 - b) For a period of one year, the College may request information from the Ontario Health Insurance Plan (OHIP) and/or the Ministry of Health and Long Term Care in order for the College to monitor Dr. Sokol's OHIP billings and to ensure his compliance with the *Health Insurance Act*;

- c) In order to facilitate the College's monitoring, specified in paragraph 2(b), Dr. Sokol shall execute a Consent in the form attached at Appendix "A" to the Order, and shall cooperate with unannounced inspections of his practice and patient charts by a College representative(s) for the purpose of monitoring and enforcing his compliance with the terms of the Order.
- 3. Dr. Sokol appear before the panel to be reprimanded.
- 4. Dr. Sokol pay costs to the College in the amount of \$3,650.00, within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Sokol waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.